BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of WAILEA DEVELOPMENT COMPANY To Amend the State Land Use District Boundaries to Reclassify Approximately 1.132 Acre from the Agricultural into the Urban District, and Approximately 0.996 Acre from the Urban into the Agricultural Land Use District, TMK: 2-1-08: portion of 42, at Wailea, Island and County of Maui	DOCKET NO. A82-537 WAILEA DEVELOPMENT COMPANY

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of WAILEA DEVELOPMENT COMPANY To Amend the State Land Use District Boundaries to Reclassify Approximately 1.132 Acre from the Agricultural into the Urban District, and Approximately 0.996 Acre from the Urban into the Agricultural Land Use District, TMK: 2-1-08: portion of 42, at Wailea, Island and County of Maui	DOCKET NO. A82-537 WAILEA DEVELOPMENT COMPANY

DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by Wailea Development Company which is requesting that the designation of 1.132 acre of property be amended from the Agricultural District to the Urban District and that the designation of 0.996 acre of property be amended from the Urban to the Agricultural District. The requested change consists of approximately 2.128 acres of land, situated at Wailea, Island and County of Maui, State of Hawaii. The subject property is more particularly described as Tax Map Key No. 2-1-08: portion of 42.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural

to Urban and from Urban to Agricultural is to adjust the existing Urban District boundary so that Lots 307 and 311 which are primarily in the Urban District at present can be developed for residential uses.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on August 18, 1982. Due notice of the hearing on this Petition was published on January 10, 1983, in the Maui News and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on January 4, 1983. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission. By letter dated January 14, 1983, the Land Use Commission asked the Petitioner if it would consent to the hearing being held on February 23, 1983, and waive the right to have the hearing scheduled on or before February 14, 1983. By letter dated January 17, 1983, the Petitioner consented to the hearing being held on February 23, 1983, and waived its right to have the hearing scheduled on or before February 14, 1983.

THE HEARING

The hearing on this Petition was held on February 23, 1983, in Wailuku, Maui, Hawaii.

Wailea Development Company, the Petitioner herein, was represented by J. Ken Peterson, Esq.; the County of Maui was represented by Guy P. Archer, Deputy Corporation Counsel; and the Department of Planning and Economic Development was represented by Esther Ueda, Land Use Division Planner. Commissioner Shinsei Miyasato was also present at this hearing.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Gary Gifford - Vice-President of Wailea Development Company

County of Maui:

John Min - Staff Planner

Department of Planning and Economic Development:

Esther Ueda - Land Use Division Planner

POSITION OF THE PARTIES

County of Maui - Approval with modification.

Department of Planning and Economic Development - Approval.

APPLICABLE REGULATIONS

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

(1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:

(a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

(b) It shall take into consideration the following factors:

1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.

2. Substantiation of economic feasibil-ityby the petitioner.

3. Proximity to basic services such as sewers, water, sanitation, schools,

parks, and police and fire protection.

4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

(c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.

(d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State of County General Plans.

(e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas or urban growth as shown on the State and County General Plans.

(f) Lands which do not conform to the above standards may be included within this District:

1. When surrounded by or adjacent to existing urban development; and

2. Only when such lands represent a minor portion of this District.

(g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.

(h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

Standards for determining the establishment of an Agricultural District are found under Part II, Section 2-2(2) of the State Land Use Commission's District

Regulations. Said regulation provides in pertinent part that:

> (2) "A" Agricultural District. In determining the boundaries for the "A" Agricultural District, the following standards shall apply:
>
> (a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.
>
> (b) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of these regulations.
>
> (c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.
>
> (d) Lands in intensive agricultural use or lands with a high capacity for intensive agricultural use shall not be taken out of this District unless the Commission finds either that:
>
> 1. such action will not substantially impair actual or potential agricultural production in the vicinity of such lands, and/or
>
> 2. such action is reasonably necessary for urban growth.

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses and the evidence adduced herein, makes the following findings of fact:

1. Wailea Development Company, the Petitioner herein, is a registered Hawaii joint venture, comprised of Wailea Land Corporation, a Hawaii corporation and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation. The subject properties are owned in fee by

Wailea Land Corporation and The Northwestern Mutual Life Insurance Company dba Wailea Development Company. As the Petitioner is a registered Hawaii joint venture of the property owners, it has their authorization to proceed with the subject boundary amendment. The subject properties, located at Wailea, Island and County of Maui, are described as Tax Map Key No. 2-1-08: portion of 42. More specifically, the subject properties include portions of Lots 307, 311, and 317 as shown on Land Court Maps 34 and 35, Land Court Application 1804, State of Hawaii, dated June 22, 1982 (Petitioner's Exhibit C). The subject properties lie within the Wailea Resort Development area at Wailea, Maui. The properties are located along the southern boundaries of the Wailea Urban District along Kaukahi Street, mauka of the intersection of Kaukahi Street and Wailea Alanui.

2. At present, the subject properties are vacant and unused. Property contiguous to the subject properties is also currently vacant and unused except for most of Lot 315 and all of lot 309 having been paved as roadways, with Lots 310 and 312, and portions of 317, being used as a golf course. Other developments abutting the Wailea Resort area include Maui Meadows, a rural residential subdivision which lies approximately 1 mile to the northeast of the subject properties and the Seibu resort area which lies approximately 1 1/3 mile south of the subject properties. The community of Kihei lies immediately north of the subject properties. The existing uses of the area surrounding the subject properties are as follows:

a. Lot 307 - undeveloped/open space
b. Lot 311 - undeveloped/open space

c. Lot 317 - golf course, open space, golf clubhouse facility

The existing uses of immediately surrounding properties are as follows:

a. Lot 309 - Kalai Waa Street (partially improved roadway)
b. Lot 310 - golf course
c. Lot 312 - golf course
d. Lot 314 - undeveloped/open space
e. Lot 315 - Kaukahi Street

3. As reflected on the Land Use Commission's District Boundary Map M-9 (Makena) the subject properties are located within the State Land Use Urban and Agricultural Districts. The subject properties abut the Urban District on their northern boundaries and the Agricultural Districts on their southern boundaries. On the 1975 Kihei General Plan, the subject properties have been designated as open space or golf course and single-family residential. On the proposed Kihei-Makena Community Plan, the subject properties have been designated as Single Family (SF), Multi-Family (Mf) and Park (Pk).

4. The proposed boundary amendments do not conflict with the County land use policies relating to the existing Wailea General Plan Map adopted on February 16, 1973 (Ordinance No. 749); the Wailea Land Zoning Map No. 752 adopted on April 19, 1973 (Ordinance No. 752); or the proposed Kihei Community Plan (1981) currently pending before the Maui County Council. County zoning for the portions of the subject properties in the Urban District is R-2 Residential, R-3 Residential, and golf course, and for the portions of the subject properties in the Agricultural District, it is unzoned. In regards to development review, the entire Wailea Resort area is subject to the requirements of the County's Planned Development Ordinance. Thus, all

major projects are subject to review and approval by the County Planning Commission. The development of Lots 307 and 311 will require Planning Commission approval, as well as compliance with other County subdivision, grading and building requirements.

5. A petition filed by Loyalty Enterprises, Ltd., ((T)62-10) to amend the temporary district boundaries to reclassify approximately 830 acres from Agriculture to the Urban District at Wailea, Maui, Tax Map Key No. 2-1-08: 42 for golf course, hotel, apartment, business and residential use was approved by the Land Use Commission on September 19, 1962.

A Special Use Permit request by Wailea Development Company (SP74-188) to allow golf course and related activities on 176 acres of land at Wailea, Maui, Tax Map Key No. 2-1-08: 42, was also approved by the Land Use Commission on November 4, 1974.

6. The subject properties have an elevation ranging from approximately 140 feet above sea level at the makai end to 350 feet above sea level at the mauka portion. The topography of the subject area slopes about 10 percent in a mauka to makai (east to west) direction. The subject area receives an average of 13.7 inches of rainfall annually. Based on Flood Insurance Rate Maps prepared by the Federal Insurance Administration for the County of Maui, the subject properties are not situated in any designated flood plain, but rather in an area designated as minimal flooding (Zone C).

7. According to the U.S.D.A. Soil Conservation Service Soil Survey for the Island of Maui, the soils of the

subject properties have been classified as Makena Loam, stony complex, 3 to 15 percent slopes, (MXC).

These soils have moderately rapid permeability, slow to medium runoff and slight to moderate erosion hazard. Natural vegetation on these soils consists of bristly foxtail, feather fingergrass, ilima and kiawe. These soils are used for pasture and wildlife habitat.

According to the Detailed Land Classification - Island of Maui, the Land Study Bureau has classified the soils in the area of the subject properties in the Waiakoa series. These soils are characterized as a complex of nonstony, stony and rocky lands, moderately fine in texture, well-drained, very poorly suited for machine tillability and having a depth of over 30 inches.

According to the University of Hawaii's Land Study Bureau, the soils of the affected areas have been classified as Pulehu, Alae, Puunene, Waiakoa, Catano-Pulehu, and Cantano-Man-made series. These soils are dark brown to dark reddish-brown, deep, well-drained, and ranging from nonstony to stony and rocky.

8. The University of Hawaii Land Study Bureau's Detailed Land Classification - Island of Maui, has assigned the subject area an overall agricultural productivity rating of "E" on it five-point rating scale with "A" indicating highest productivity and "E" indicating lowest productivity. Under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, the subject properties are unclassified. According to the Petition, the subject properties designated Agriculture which are proposed for Urban designation have never been cultivated or put to any agricultural use for the

last 24 years. The only historical use, if any, appears to have been low density cattle grazing.

9. An on-site archaeological survey conducted by archaeologist Paul H. Rosendahl, Ph.D., and his staff, revealed that there are no historical, archaeological or cultural sites on the subject properties. The Petitioner has represented that it is prepared to notify the Department of Land and Natural Resources in the event any archaeological or cultural resources, sites or artifacts are discovered on the subject properties during the course of development.

10. According to the Petition, there are no rare, endangered or threatened species of flora or fauna on or abutting the subject properties.

11. Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Urban and from Urban to Agricultural is to adjust the existing Urban District boundary so that Lots 307 and 311 which are primarily in the Urban District at present can be developed for residential use. According to the Petition, the existing district boundary appears to have been established along the boundaries of the ahupuaa, rather than along the natural features of the terrain; the present boundary is a straight line following the boundaries between the ahupuaas of Paeahu and Palauea. The proposed boundary amendment would establish a boundary to reflect the natural terrain features followed in the construction of Kaukahi Street and would alleviate County concerns that the Petitioner is following an "artificial boundary" (the

straight line) in the lotting scheme of its development plans.

According to the Petition, the proposed boundary adjustment would follow along the contours of Kaukahi Street, adding small portions of Lots 307 and 311 to the Urban District, and then continue along the existing boundary. Portions of Lot 317 would revert from the Urban to the Agricultural District. The Petitioner originally requested reclassification of approximately 1.132 acre of land from the Agricultural to the Urban District and 0.996 acre of land from the Urban to the Agricultural District, broken down by Lot and area as follows:

a. Lot 307 - 0.030 acre (from Agricultural to Urban District)
b. Lot 311 - 1.102 acre (from Agricultural to Urban District)
c. Lot 317 - 0.996 acre (from Urban to Agricultural District)

Although the County of Maui Planning Department had no objections to the proposed boundary amendment, as a matter of practicality it felt it would be more suitable to relocate the Urban-Agricultural District boundary. As proposed by the Petitioner, the boundary line would cut across Kaukahi Street (Lot 315) at several points and be difficult to locate on the ground since it would not follow a defined landmark. The Maui County Planning Department felt the Urban-Agricultural District boundary would be more suitably located along the south edge of the Kaukahi Street right-of-way (Lot 315) from the mauka (east) end of Lot 315 to a point near the southeast corner of Parcel 4 (Maui County Exhibit 2). This suggested delineation of the Urban-Agricultural District boundary would add 1.07 acre of land to the Urban District. The total acreage reclassified from

the Agriculture to the Urban would then be 2.202 acres versus 1.132 acre as proposed by the Petitioner. The suggested boundary amendment would result in a net difference of 1.206 acre being added into the Urban District versus 0.136 acre as proposed by the Petitioner. The inclusion of 1.07 acre of Lot 315 into the Urban District is not expected to result in an increase of developable area, as the Kaukahi Street right-of-way is an established lot and substantially improved as a roadway. The Petitioner and the Department of Planning and Economic Development both agreed to Maui County Planning Department's modification of the Petitioner's proposed boundary adjustment.

12. The Petitioner has represented that the proposed boundary adjustment is needed to permit the complete residential development of Lots 307 and 311 which are currently primarily in the Urban District. The Petitioner has also represented that development activities will be in conformance with current zoning and general plan designations for the area, applications for the necessary subdivision approvals will be filed with the appropriate County agencies, on-site improvements as required by State and County regulations will be coordinated with respective authorities to ensure compliance, and all on-site improvements required by County ordinances will be constructed.

The Petitioner has indicated that it has already developed large portions of the Urban-designated lands and has pending development plans for portions of the area within the adjusted boundary. The Petitioner intends to to develop Lot 311, designated to be Golf Estates II, into a 52-lot, single-family residential subdivision with estimated lot prices ranging from $12 to $13 per square foot. The

ultimate sales price, however, will depend upon actual development costs and then current market conditions. Petitioner estimates that the residential units will be constructed and available for sale in two (2) years and that the proposed project will be substantially completed within five (5) years.

13. According to Alexander & Baldwin, Inc.'s, 1981 Annual Report which shows total assets of $638,877,000 for 1981, and Northwestern Mutual Life's 1981 Annual Report which shows total assets of $12+ billion for 1981, the Petitioner has the financial capability to undertake the proposed subdivision development (Petition, Exhibits H and I). The combined assets of the two joint venture partners, Wailea Land through Alexander & Baldwin, and the Northwestern Mutual Life Insurance Company, are approximately $13 billion. The joint venture operates on a line of credit that extends up to approximately $36 million.

14. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Primary access to the Wailea Resort area is available from Piilani Highway via Kilohana Drive and from Kihei Road via Okolani Drive. Although additional traffic can be expected on Kihei Road and Piilani Highway, the primary impact will be upon Piilani Highway which has been designed for adequate capacity. All interior roads and new roads will have concrete curbs and gutters where required. Street rights-of-way in residential areas will be constructed and improved

in conformance with applicable County of Maui subdivision standards.

b. Water - According to the Petition, water for the Wailea Resort development area is from the Central Maui transmission line which was built by a joint venture of the County of Maui, the Petitioner, and Seibu Hawaii, Inc. A 30-inch transmission line passes through the Wailea Resort area. There are three (3) water storage tanks with capacities of 1.5 million, 2.0 million, and 3 million gallons servicing the resort. Waterlines and fire hydrants have been installed to service existing and future developments. The County of Maui Department of Water Supply has indicated that the proposed boundary amendment will not affect their system.

c. Drainage - According to the Petition, on-site runoff presently flows into an unnamed gulch located northwest of the subject properties which carries runoff from a minor drainage basin including areas within and mauka of the Wailea Resort and discharges into the nearshore waters of Wailea Beach. It is estimated that the current on-site/off-site runoff within this gulch is approximately 240 cfs. Development of the subject properties, as proposed, is not anticipated to materially increase total flow or create a considerable environmental impact on the quality of the nearshore waters.

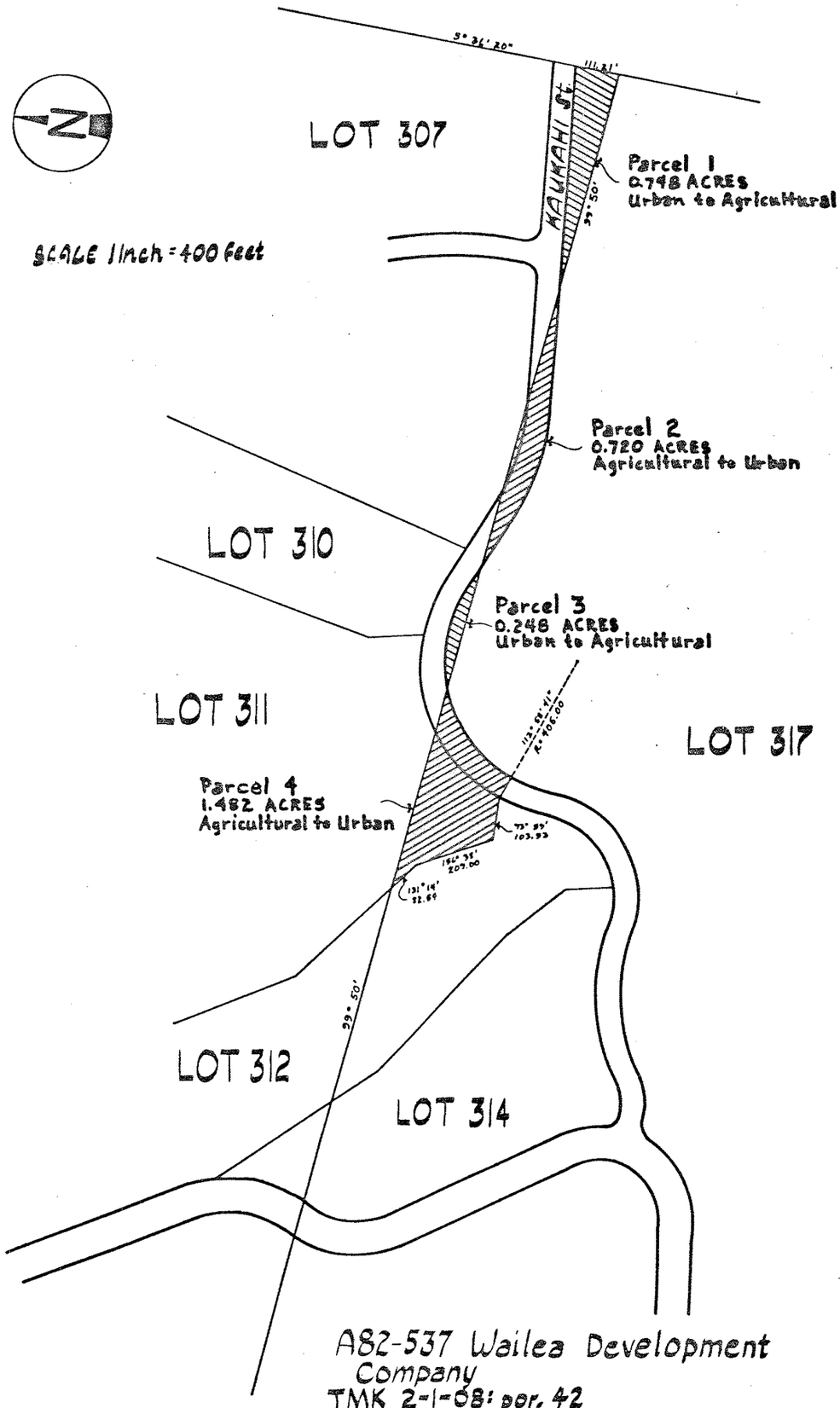
The Department of Planning and Economic Development, however, expressed concerns regarding

the cumulative effects of urban development on marine resources along the Kihei-Wailea Coast as follows:

> We feel all coastal development projects, no matter how large or small, should include provisions to minimize the effects of increased freshwater drainage discharge on the marine environment. Accordingly, we suggest that should the petition be approved, the following be implemented:
>
> 1. Construction and sitework be scheduled for periods of minimal rainfall;
>
> 2. Lands denuded of vegetation be covered as quickly as possible (i.e. through replanting or other means);
>
> 3. Construction materials, petroleum products, human wastes, debris, and landscaping substances (herbicides, fertilizers, pesticides) be prevented from falling, flowing, or leaching into the ocean; and
>
> 4. Wastewater disposal construction and units be in compliance with governmental standards.

The Petitioner has represented that as part of its construction contract, it will require that all construction work be scheduled for periods of minimal rainfall. Covering and grassing will be included in the completion of the project, maintenance of construction materials and other related products will be controlled and not diverted into the ocean, and the Petitioner has consented to meet all regulations and requirements for wastewater disposal.

d. Sewage - The Petitioner has represented that sewage from the Wailea Resort is handled by the Kihei Sewage Treatment Plant which has ample capacity to handle the sewage. There are 8-inch to



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Wailea, Maui, Hawaii

EXHIBIT A

24-inch sewer mains and collector lines within the resort servicing all existing developments.

e. Schools - According to the State Department of Education, the proposed boundary amendment will have a negligible impact on the schools servicing the area. High school students in the Kihei-Wailea-Makena area are serviced by Baldwin High School. However, because the existing Kihei school is operating at capacity, it can only accommodate student enrollment generated by the Petition.

f. Telephone and Electrical Service - According to the Petition, the Wailea Resort is serviced by Maui Electric Company, Ltd., which has ample capacity to meet all of the resort's needs. Telephone service to the Wailea Resort is available from Hawaiian Telephone Company which also has ample capacity to meet all of the resort's needs. All internal electrical distribution is underground.

g. Police and Fire Protection - Police protection by means of dispatched patrol cars will be provided to the subject area by the County of Maui's main station in Wailuku. A fully manned County fire station is located in Kihei.

15. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the Petitioner and the Department of Planning and Economic Development had no objections to the boundary line modifications proposed by the County of Maui to the reclassification of the subject property.

CONCLUSIONS OF LAW

Reclassification of the subject properties, consisting of approximately 2.202 acres of land, from the Agricultural District to the Urban District as requested by the County of Maui and agreed to by the parties, and 0.996 acre of land, from the Urban District to the Agricultural District, situated at Wailea, Island and County of Maui, and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A82-537, consisting of approximately 2.202 acres in the Agricultural District, and approximately 0.996 acre in the Urban District, situated at Wailea, Island and County of Maui, identified as Tax Map Key No. 2-1-08: portion of 42, shall be and hereby is reclassified from the Agricultural District to the Urban District and from the Urban District to the Agricultural District, respectively, and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 10th day of May, 1983, per Motion on April 14, 1983.

LAND USE COMMISSION
STATE OF HAWAII

By _____
RICHARD B. F. CHOY,
Vice-Chairman

By _____
LAWRENCE F. CHUN,
Commissioner

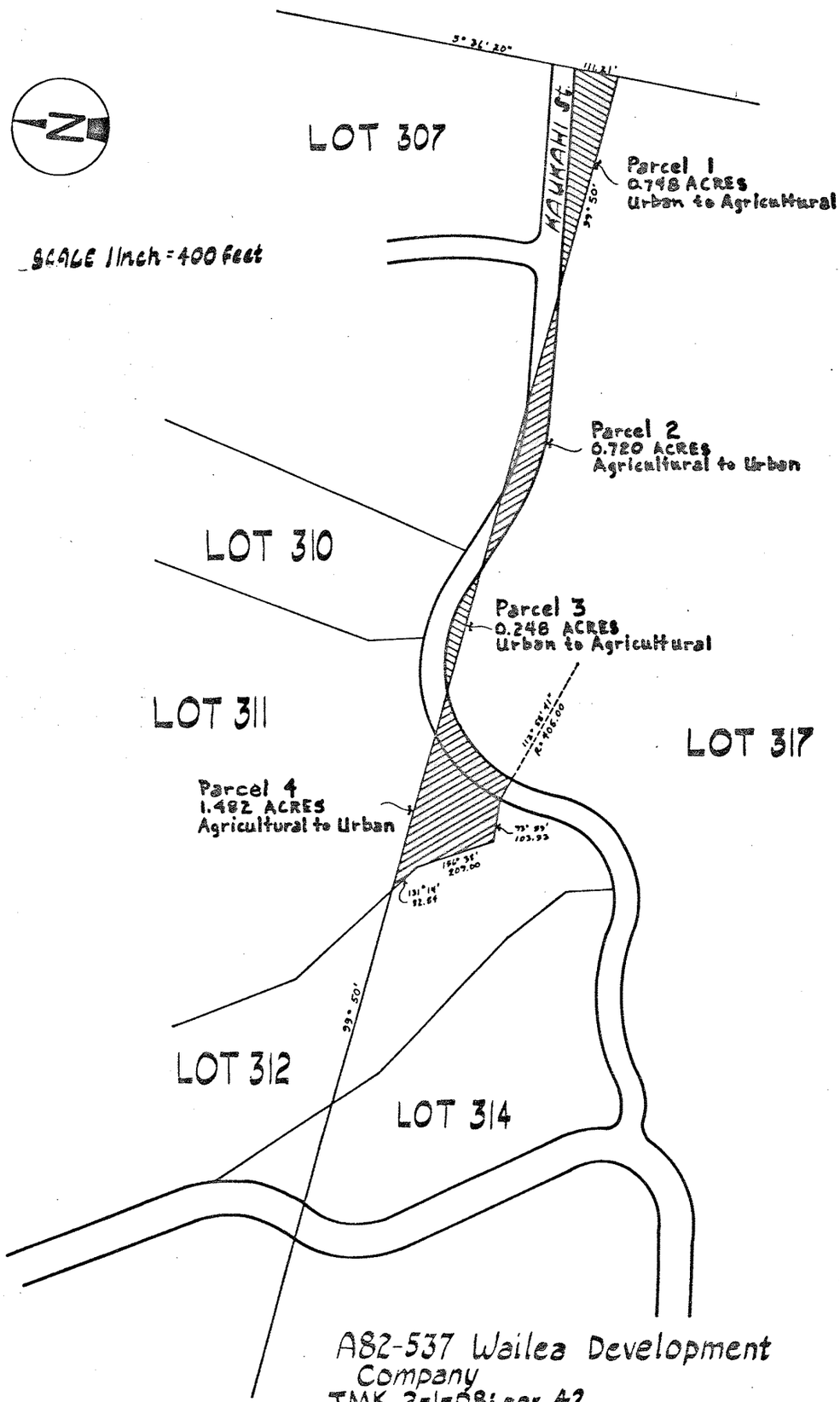
By Shinsei Miyasato
SHINSEI MIYASATO,
Commissioner

By Winona E. Rubin
WINONA E. RUBIN,
Commissioner

By T P Tacbian
TEOFILO PHIL TACBIAN,
Commissioner

By Robert Tamaye
ROBERT S. TAMAYE,
Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE,
Commissioner



A82-537 Wailea Development Company
TMK 2-1-08: por. 42
Wailea, Maui, Hawaii

EXHIBIT A

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of WAILEA DEVELOPMENT COMPANY To Amend the State Land Use District Boundaries to Reclassify Approximately 1.132 Acre from the Agricultural into the Urban District, and Approximately 0.996 Acre from the Urban into the Agricultural Land Use District, TMK: 2-1-08: Portion of 42, at Wailea, Island and County of Maui	)	DOCKET NO. A82-537

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

TOSH ISHIKAWA, Planning Director
Planning Department
County of Maui
200 South High Street
Wailuku, Hawaii 96793

TAMOTSU TANAKA, ESQ.
600 Melim Building
333 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 10th day of May, 1983.

GORDAN Y. FURUTANI
Executive Officer

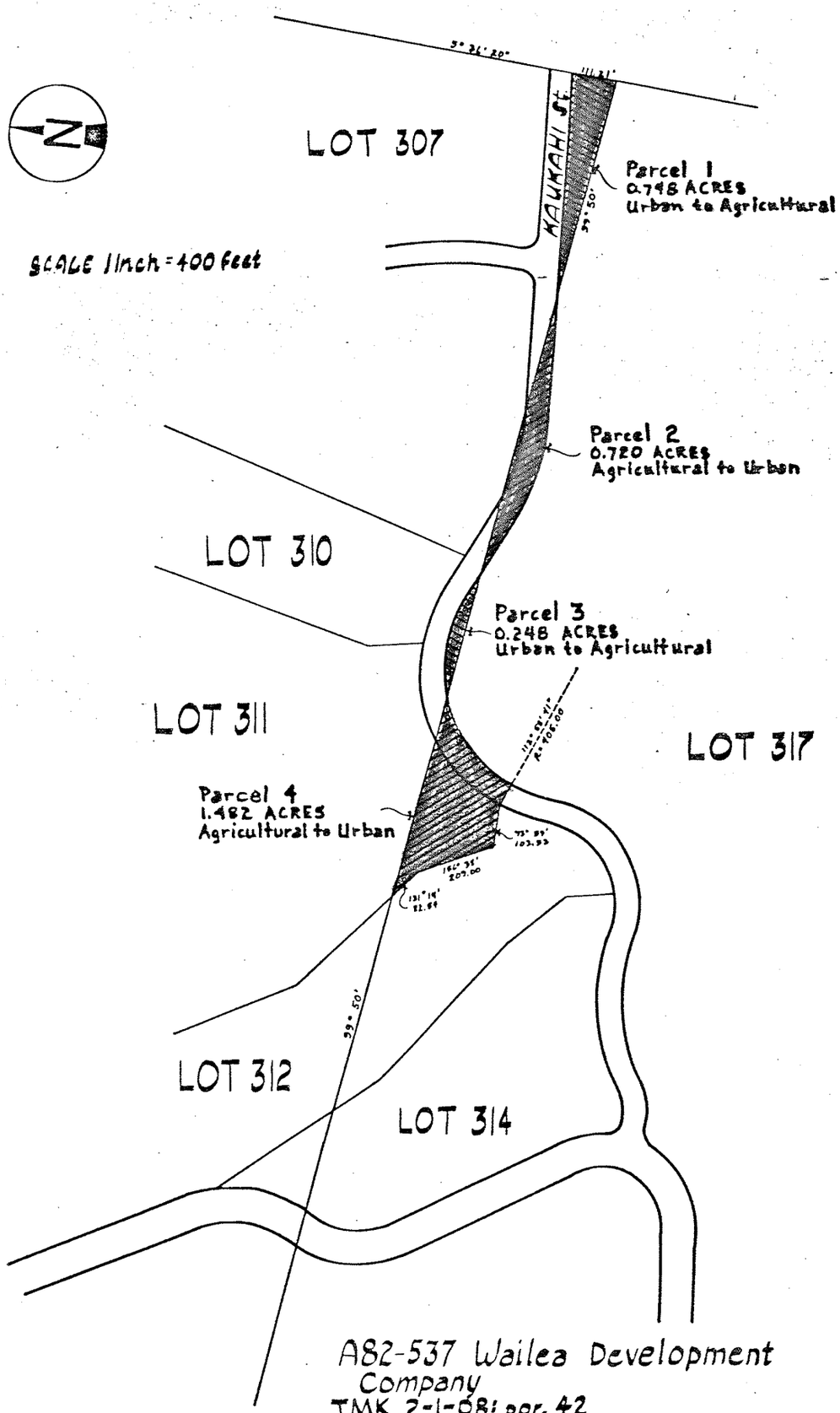
DOCKET NO. A82-537 - WAILEA DEVELOPMENT COMPANY

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on May 10th 1983:

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

H. RODGER BETTS, Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

BENJAMIN M. MATSUBARA
Suite 1748, 190 South King Street
Pacific Trade Center
Honolulu, Hawaii 96813



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Wailea, Maui, Hawaii

EXHIBIT A